

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
CTIA Petition for Declaratory Ruling on)	DA 03-1753
Local Number Portability Implementation)	
Issues)	
)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

I. Introduction

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal Communications Commission's (FCC, Commission) Public Notice¹ seeking comment on the May 13, 2003 Petition for Declaratory Ruling (Petition) filed by the Cellular Telecommunications & Internet Association (CTIA). OPASTCO is a national trade association representing approximately 500 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). Nearly one half of OPASTCO's members provide some type of

¹ *Comment Sought on CTIA Petition for Declaratory Ruling on Local Number Portability Implementation Issues*, CC Docket No. 95-116, Public Notice, DA 03-1753 (rel. May 22, 2003).

wireless service. OPASTCO holds a seat on the North American Numbering Council (NANC) and actively participates in that body's deliberations.

Numerous OPASTCO members are receiving invalid "bona fide request" forms for local number portability (LNP) from commercial mobile radio service (CMRS) providers. Most of these forms are not valid because the requesting carriers do not have any interconnection agreements with the rural carriers, nor do they have any established point of presence in the rural carriers' rate centers. The receipt of invalid forms causes small LECs to expend a considerable amount of time to research and respond to these requests. Therefore, OPASTCO urges the Commission to clarify that: 1) in order for a "bona fide request" for portability to be valid, the requesting carrier must have interconnection arrangements in place with the incumbent, and 2) numbers cannot be ported outside of a rural carrier's rate center. The record in this proceeding demonstrates that the public interest will be harmed without these clarifications.

II. NUMBER PORTABILITY CAN ONLY BE ACHIEVED WHERE INTERCONNECTION AGREEMENTS ARE IN FORCE

CTIA's petition asserts that interconnection agreements are not necessary to implement of number portability.² The petition argues that "service level porting agreements" are the only arrangements necessary for wireline-to-wireless LNP.³ However, the petition fails to explain how traffic would be exchanged to and from ported numbers in the absence of interconnection arrangements as provided for in section 251 of the Telecommunications Act of 1996 (1996 Act, the Act). Without such agreements, small carriers may find it necessary to incur further expenses to route traffic to a carrier

² Petition, pp. 17-21.

³ *Ibid*, p. 16.

that has requested LNP. For example, unanticipated expenses could result in cases where it may become necessary to route traffic over Extended Area Service (EAS) routes. EAS routes are paid for by the local ratepayers who benefit from them, and are authorized by regulators to carry local traffic between two exchanges that serve communities with common interests. They are designed only for this purpose. If they must carry additional traffic brought about by improper LNP requests, unanticipated upgrades may become necessary.

CTIA's petition provides no explanation of how the costs incurred by LNP-related traffic would be recovered. End users could find themselves unexpectedly being charged toll rates for calls that were once local. The lack of explanation repeats a flaw of a similar petition filed by CTIA in this docket,⁴ in which they neglected to explain how the essential functions performed by rating tables would be fulfilled under their plan.⁵

The petition's assertion that it is "impermissible" to require CMRS providers to engage in interconnection agreements under section 251⁶ is meritless. Indeed, CTIA contradicts itself, accurately citing the Commission's authority under section 251(b)(2) to craft rules for technically feasible number portability.⁷ In order to insure that LNP actually works as it should, the Commission should clarify that interconnection agreements are a necessary pre-requisite for LNP regardless of the technology platform used by the requesting carrier.

⁴ *CTIA Petition for Declaratory Ruling That Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas*, CC Docket No. 95-116 (fil. Jan. 23, 2003) (Jan. 23 Petition).

⁵ See OPASTCO comments, *Comments Sought on CTIA Petition for Declaratory Ruling That Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas*, CC Docket No. 95-116, Public Notice, DA 03-211 (rel. Jan. 27, 2003) (fil. Feb. 26, 2003) (OPASTCO comments), pp. 2-3. See also Section III, below.

⁶ Petition, pp. 19-20.

III. THE COMMISSION HAS CORRECTLY DECLINED TO MANDATE THE PORTING OF NUMBERS OUTSIDE OF THEIR ASSIGNED RATE CENTERS

The petition fails to address the problems that would be associated with porting numbers outside of their assigned rate centers. CTIA has acknowledged that the Commission previously agreed with the NANC's assessment that "location portability is technically limited to rate center/rate district boundaries of the incumbent LEC due to rating/routing concerns."⁸ Numbers must be assigned to a particular rate center for several reasons, such as to determine which calls are local, and which calls are subject to toll charges. Of course, calls that require transport by a toll provider generate access costs, which must be recovered through lawful access charges.⁹ As OPASTCO stated previously,¹⁰ if a number assigned to a particular rate center is ported to another carrier's facilities outside of that rate center, then any calls initiated by that number may become toll calls, even if they were previously local. Furthermore, customers calling the ported number may find that the call is suddenly subject to toll charges, which were not imposed prior to porting. Customers would be subject to undue confusion and frustration by these unexplained alterations. Clearly, this conflicts with the statutory definition of "number portability," which requires, among other things, that consumers be able to retain numbers without impairment of "quality, reliability, or *convenience*."¹¹

OPASTCO has further noted¹² that if numbers are ported outside of their rate centers, rate center databases would be contaminated. This is because numbers originally

⁷ *Id.*, p. 20 (cite omitted).

⁸ OPASTCO comments, p. 2 (citing Jan. 23 Petition, p. 5).

⁹ *Id.*

¹⁰ *Id.*, pp. 4-5.

¹¹ 47 U.S.C. § 153(30) (emphasis added).

assigned to a particular rate center where a wireless carrier does not have an interconnection agreement in place or NXX codes assigned would be handled by equipment located at another rate center where a wireless carrier has facilities or NXX codes. This new rate center may be located within a differing service area, adding to the confusion and obscuring what intercarrier compensation regime and jurisdictional rules should apply. The petition offers no solution to the considerable administrative and jurisdictional problems and associated costs that these situations would impose.

IV. THE PUBLIC INTEREST WOULD BE HARMED IF CMRS CARRIERS ARE PERMITTED TO PORT NUMBERS OUTSIDE OF ASSIGNED RATE CENTERS ABSENT AN INTERCONNECTION AGREEMENT

CTIA engages in transparent hypocrisy by falsely accusing LECs of having no motives in this matter other than trying to “delay the availability of portability to consumers” and “inhibit competition” to the detriment of the public interest.¹³ CTIA fails to consider that competitive local exchange carriers (CLECs), especially small CLECs serving rural areas, would also be impacted in an adverse manner, as would their customers. Further, the extensive record in this proceeding demonstrates that the confusion caused by indiscriminate application of LNP requirements on rural carriers, without addressing the need for interconnection agreements or rate center issues, would cause harm to small rural carriers – incumbent, competitive, and wireless alike – as well as their consumers. Clearly, the resulting confusion and higher costs would not be in the public interest.

LNP requirements impose significant costs, which are disproportionately higher for small landline carriers, whether incumbent or competitor. This is another highly

¹² OPASTCO comments, p. 3.

salient factor that CTIA ignores. Therefore, it is critical for the Commission to continue balancing potential benefits against the real expenses that small carriers, and by extension their customers, would have to incur in order to implement LNP.

V. CONCLUSION

CTIA's petition is correct to the extent that clarification is needed. Therefore, it is imperative that the Commission explicitly rule that 1) interconnection agreements must be in force in order for a "bona fide request" for portability to be valid, and 2) numbers cannot be ported outside of a rural carrier's rate center.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

By: /s/ John McHugh
John McHugh
Technical Director

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990

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¹³ Petition, p. 21.

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, or via electronic mail on this, the 13th day of June, 2003, to those listed on the attached sheet.

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich

SERVICE LIST
CC Docket No. 95-116
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Michael F. Altschul
SVP, General Counsel
CTIA
1250 Connecticut Avenue, NW
Suite 800
Washington, DC 20036

VIA E-MAIL

Qualex International
qualexint@aol.com